



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 08-11440
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On October 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant's answered the SOR in writing on November 9, 2009, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on January 25, 2010. The FORM was

mailed to Applicant, and it was received on February 2, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. The case was assigned to me on March 9, 2010.

Findings of Fact

In Applicant's answer to the SOR, he denied ¶¶ 1.a and 1.b, and admitted the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He served in the Marine Corps Reserve from 1985 to 1993, and was honorably discharged. He is not married and has no children. He worked as a policeman for a university from 1984 to 2005. There is conflicting information provided by Applicant about what he did after he left the police force. It is also unclear if he retired from the police force, or left for another reason. If he retired and receives a pension, he did not list it on his personal financial statement.¹ In Applicant's interview with an Office of Personnel Management (OPM) investigator on October 9, 2008, he stated he took a year off after he retired.² In his response to the FORM, Applicant stated "Yes, I left a job in law enforcement after almost 21 years of service. I did take some time before re-entering the work force."³ He did not say how much time. He further stated: "I did apply for other law enforcement jobs during that time."⁴ His job search in the security/law enforcement field was unsuccessful.⁵ In August 2006, he accepted employment as an insurance salesman, working on commission. He had "little success."⁶ He then was employed in the car industry from May 2007 to April 2008. He has worked for a federal contractor since April 2008.

Applicant stated he injured his back in November 2006, and had surgery in April 2007. During Applicant's periods of underemployment and unemployment, he used credit cards to pay his bills. He stated: "I do not dispute I have made poor [choices] in the past few years. I have."⁷ In his OPM statement from October 2008, he stated that now that he had a good job, he planned to pay off or bring current his past-due debts beginning in January 2009, and satisfying them all within one to two years.⁸

¹ Item 7.

² *Id.*

³ *Id.*

⁴ Response to FORM.

⁵ *Id.*

⁶ Response to FORM.

⁷ *Id.*

⁸ Item 7.

Applicant stated in response to interrogatories dated February 23, 2009, referring to SOR ¶ 1.b, that: "I have not attempted to settle this account yet."⁹ In his answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a (\$106) and 1.b (\$9,450), claiming he paid the debts. The debts are listed on his credit report as delinquent. He did not provide any evidence to support the debts have been paid.¹⁰

Applicant admitted he owes the delinquent debts in SOR ¶¶ 1.c (\$14,029), 1.d (\$6,064), and 1.e (\$12,003). He stated in his response to the FORM that he has contacted the largest account holder and has a settlement "in the works."¹¹ He did not specifically identify which debt he was referring to. He stated he was waiting to pay his 2009 income taxes before "settling the remaining items on his credit history."¹² Applicant stated he intended to pay all of his delinquent debts. In April 2009, his mother passed away and he paid her funeral expenses.

In 2006, Applicant made two trips to Mexico. He provided a letter from a friend confirming these trips were paid for by the friend, and Applicant helped his friend make repairs on a house owned by the friend that was damaged in two hurricanes.¹³

Applicant provided in a statement that he took advice from a financial advisor regarding his outstanding debt and was advised to settle the debts when he had funds available. He was also advised to purchase a new vehicle, because he was working at a car dealer, to reestablish his credit. Applicant stated he took the advice, but did not specify what he did.¹⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching

⁹ Item 6.

¹⁰ Item 8 is a credit bureau report (CBR) from June 4, 2009. It notes the consumer disputes the debt alleged in SOR ¶ 1.b. No other information is provided by Applicant regarding this debt.

¹¹ Response to FORM.

¹² *Id.*

¹³ *Id.*

¹⁴ Item 6.

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially

overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has approximately \$41,652 in delinquent debt that remains unpaid or unresolved. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant did not provide evidence that he has paid or resolved any of his delinquent debts. Therefore, his behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain owed and unresolved. Applicant provided some information that he experienced periods of unemployment and underemployment. However, he failed to provide enough information to determine how long he took off voluntarily after he left the police force, whether he is receiving a pension, how he planned his finances for when he was

voluntarily not working, and when he began to use credit cards to pay his bills. I am unable to determine that his financial problems were beyond his control, or if he acted responsibly under the circumstances. I find AG ¶ 20(b) does not apply. There is some evidence Applicant sought advice from a financial advisor. However, there is not clear evidence that Applicant's financial problems are being resolved or under control. He did not provide evidence that he has made a good-faith effort to pay his delinquent debts or attempt to resolve them. I find AG ¶¶ 20(c) and 20(d) do not apply. Applicant responded that he paid the debts in SOR ¶¶ 1.a and 1.b, but did not provide any proof to show he paid the debt or resolved it. I find AG ¶ 20 (e) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant received an honorable discharge from the military. He was a policeman for 21 years. I have considered he experienced periods of underemployment and unemployment. I have also considered his medical issue and that he paid for his mother's funeral expenses. Applicant failed to provide sufficient information to clarify how he financially planned for taking time off after he left the police force. He did not provide documentation to show he paid any of his delinquent debts. He did not provide information that he has a repayment plan or settlement agreement with any of the creditors. He failed to provide sufficient evidence to mitigate the security concerns. Overall the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a-1.e:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge